Supreme Court, U. S.
FILED
JUL 22 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-942

FRANK L. RIZZO, *et al.*,

Petitioners,

v.

GERALD G. GOODE, *et al.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
DREW S. DAYS, III
10 Columbus Circle
New York, New York 10019

Attorneys for the N.A.A.C.P. Legal Defense and Educational Fund, Inc.

MEILEN PRESS INC. — N. Y. C. 219

INDEX

PAGE

Interest of *Amicus* 1

Introduction 4

Argument 4

Conclusion 15

Table of Authorities

Appendix—

Judgment, U.S.D.C., D. R.I., *Coalition of Black Leadership* v. *Doorley* 1a

Consent Decree, U.S.D.C., M.D. Ga., *Ridgeway* v. *Thompson* 7a

Motion for Leave to Strike Class Action, U.S.D.C., D. Md., *Boyd* v. *Kelly* 24a

Order, U.S.D.C., D. Md., *Boyd* v. *Kelly* 28a

Cases:

Boyd v. *Gullett*, No. 72-1278K (D. Md. 1972) 3, 14

Boyden v. *Troken*, 352 F. Supp. 722 (N.D. Ill. 1973) 5

Brazier v. *Cherry*, 293 F.2d 401 (5th Cir.), *cert. denied*, 368 U.S. 921 (1961) 2

Byrd v. *Brishke*, 466 F.2d 6 (7th Cir. 1972) 14

City of Kenosha v. *Bruno*, 412 U.S. 507 (1973) 5-6

Clark v. *Carson*, No. 74-162-Civ-J-T (M.D. Fla. 1974) 3, 14

Coalition of Black Leadership v. *Doorley*, No. 4523 (D.R.I. 1971) 3, 14

Coleman v. *Klein*, No. 73-Civ.-1857 (E.D. N.Y. 1973) ..3, 14

PAGE

Jenkins v. *Averett*, 424 F.2d 1228 (4th Cir. 1970) 2

Lankford v. *Gelston*, 364 F.2d 197 (4th Cir. 1966) 2, 5
Louisiana v. *United States*, 380 U.S. 145 (1965) 14

Mapp v. *Ohio*, 367 U.S. 643 5
Monroe v. *Pape*, 365 U.S. 167 (1961) 5

Ridgeway v. *Thompson*, No. 2893 (M.D. Ga. 1974) 3, 14

Swann v. *Charlotte-Mecklenburg Board of Education*, 401 U.S. 1 (1971) 14

Statutory Provisions:

42 U.S.C. §1983 .....5, 6, 7

Other Authorities:

Balch, *The Police Personality: Fact or Fiction*, 63 Jour. Crim. L., C. & P.C. 106 (1972) 11

Bayley and Mendelson, *Minorities and the Police* (1969) 8

Black and Reiss, "Patterns of Behavior in Police and Citizen Transactions", *II Studies of Crime and Law Enforcement in Major Metropolitan Areas* (1967) 8

Chevigny, *Police Power: Police Abuses in New York City* (1969) 8, 9, 10

Cohen, *The Internal Systems of Justice in New York City*, 63 J. Crim. L.C. & P.S. (1972) 12, 13

Comment, *Socio-Legal Aspects of Racially-Motivated Police Misconduct*, 71 Duke L.J. 751 (1971) 8

Cray, *The Big Blue Line*, (1967) 8, 9, 10

PAGE

Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 Minn. L. Rev. 493 (1955) 5

Ginger & Bell, *Police Misconduct Litigation—Plaintiff's Remedies*, 15 Am. Jur. Trials 555 (1968) 7

Hall, *The Law of Arrest in Relation to Contemporary Social Problems*, 3 Univ. of Chi. L. Rev. 345 (1936) 5

Hirshfeld, *Abuses of Police Authority* (1970) 8

La Fave, *Arrest: The Decision to Take a Suspect Into Custody* (1965) 8

Law Enforcement: The Matter of Redress, Report by the American Civil Liberties Union of Southern California (1969) 12

Levine, *Implementing Legal Policies Through Operant Conditioning: The Case of Police Practices*, 6 Law and Soc. Rev. 195 (1972) 11

The Metcalfe Report on the Misuse of Police Authority in Chicago, The Chicago Defender (July, 1973) ..9, 10, 11, 12, 13

National Capital Area Civil Liberties Union, *A Police Department in Trouble: Racial Discrimination and Misconduct in the Police Department of Washington, D.C.* (1968) 8

The National Advisory Commission on Civil Disorders, *Report* (1968) 7

Neiderhoffer, *Behind the Shield* (1967) 12

The New York City Rand Institute, *The Police Internal Administration of Justice in New York City* (1970) 12

PAGE

Note, *The Administration of Complaints by Civilians Against the Police,* 77 Harv. L. Rev. 499 (1963) 12

Note, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct,* 78 Yale L.J. 143 (1968) 5

Note, *Injunctive Relief Against Municipalities Under Section 1983,* 119 U. of Pa. L. Rev. 389 (1970) 6

Note, *Use of § 1983 To Remedy Unconstitutional Police Conduct: Guarding the Guards,* 5 Harv. Civil Rights-Civ. Lib. L. Rev. 104 (1970) 5

Police Brutality, The Chicago Tribune (Nov. 1973) 11

President's Commission on Crime in the District of Columbia, *Report* (1966) 8

The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967) 7

The President's Commission on Law Enforcement and Administration of Justice: *Task Force Report: The Police* (1967) 5, 8, 9, 11

Reiss, "Police Brutality—Answers to Key Questions," *Transaction* (July-August, 1968) 7, 12

Reiss & Bordua, "Environment and Organization: A Perspective on the Police," Bordua, *The Police: Six Sociological Essays* (1967) 12

Rinella, *Police Brutality and Racial Prejudice: A First Close Look,* 45 J. Urban L. 773 (1968) 8

Skolnick, *Justice Without Trial* (1967) 10

Stoddard, *The Informal "Code" of Police Deviancy: A Group Approach to "Blue-Coat Crime",* 59 J. Crim. L., C. & P.C. 201 (1968) 11

PAGE

Terris, *Annals of the American Academy of Politics and Social Science* (1967) 8

United States Commission on Civil Rights, *Mexican-Americans and the Administration of Justice in the Southwest* (1970) 8

Westley, *Violence and the Police* (1970) 7, 11

Wolfgang & Cohen, *Crime and Race* (1970) 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 74-942

FRANK L. RIZZO, *et al.*,

Petitioners,

v.

GERALD G. GOODE, *et al.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF *AMICUS CURIAE* OF THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Interest of *Amicus**

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit corporation, incorporated under the laws of the State of New York to assist blacks to secure their constitutional rights through the courts. Its charter declares that its purposes include rendering legal aid gratuitously to blacks suffering injustice by reason of race who are unable, on account of poverty, to employ legal counsel on their own behalf. The charter was approved by a New York court, authorizing the organiza-

---

* Letters of Consent from counsel for the petitioners and respondents in this case have been filed with the Clerk of the Court.

tion to serve as a legal aid society. The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is independent of other organizations and is supported by contributions from the public. For many years its attorneys have represented parties in this Court and the lower courts, and it has paticipated as *amicus curiae* in this Court and other courts.

Since its inception, the Legal Defense Fund has acted as counsel in numerous federal court cases seeking redress on behalf of its black clients for acts of police misconduct and abuse.** Through its involvement in such litigation, the Fund has concluded that certain recurrent problems of police misconduct toward citizens, particularly members of black and other minority communities, cannot be resolved meaningfully in every instance by reliance upon the so-called traditional techniques of seeking damages for individuals subjected to police misbehavior, as in *Jenkins,*** or obtaining injunctive-declaratory relief with respect to discrete albeit concerted, acts of police lawlessness, as in *Lankford.*** For what such suits fail to address is the extent to which institutional reluctance by some police departments to establish efficient, open and fair procedures for the receipt, investigation and disposition of citizens complaints of police misconduct itself serves to encourage repeated acts of misconduct toward citizens by those relatively few officers in each department prone to exceed their lawful authority. Such suits often tend to confront and eradicate only the manifestations not the root causes of police abuse and misconduct. Consequently, in several recent lawsuits, the Legal Defense Fund has sought federal court orders requiring the defendant police departments to establish or

** E.g. *Brazier* v. *Cherry,* 293 F.2d 401 (5th Cir.), *cert. denied,* 368 U.S. 921 (1961); *Lankford* v. *Gelston,* 364 F.2d 197 (4th Cir. 1966); and *Jenkins* v. *Averett,* 424 F.2d 1228 (4th Cir. 1970).

reform departmental procedures for handling citizen complaints of misconduct. Three of those suits were settled before judgment on the basis of police department agreements to create effective complaint procedures*** and two such suits are still pending.****

In this litigation, the Court is presented with the question of whether the trial and appellate courts acted within their constitutional authority to remedy claims of continuing police misconduct by requiring the Philadelphia Police Department to establish new citizen complaint procedures. The decision in this case as to the propriety of the remedy ordered must turn on the facts particular to the Philadelphia situation. What the Court does here, however, may have a dispositive effect upon federal suits such as those brought by the Fund seeking reform of police procedures. Moreover, it may determine the ability in the future of the federal judiciary to respond effectively and creatively to varieties of police misconduct that experience has taught may not be remediable by individual damage or prohibitory injunctive relief actions. Mindful of the potentially wide-reaching impact upon police litigation of the Court's decision in this case, the Legal Defense Fund would like to bring to the attention of the Court several considerations it believes justify an affirmance of the judgment below.

*** *Coalition of Black Leadership* v. *Doorley,* No. 4523 (D.R.I. 1971); *Ridgeway* v. *Thompson,* No. 2893 (M.D. Ga. 1974); and *Boyd* v. *Gullet,* No. 72-1278K (D.Md. 1972).

**** *Coleman* v. *Klein,* No. 73-Civ-1857 (E.D.N.Y. 1973) and *Clark* v. *Carson,* No. 74-162-Civ.-J-T (M.D. Fla. 1974).

Introduction

In this litigation, the trial court determined that a causal nexus existed between the lack of effective procedures for dealing with citizen complaints and the recurrence of acts of misconduct by certain members of the Philadelphia Police Department. It concluded, therefore, that an effective and appropriate response to the constitutional violation was to require the Department to establish new mechanisms for ensuring that citizen complaints would be handled quickly, fairly and openly.

We respectfully submit that the Court of Appeals for the Third Circuit was correct in affirming the trial court's judgment and that this Court should find accordingly. It is well-recognized that individual damage and prohibitory injunctive relief actions have enjoyed limited success in preventing the recurrence of police misconduct and it is equally acknowledged that the type of institutional inaction that the trial court found with respect to the Philadelphia Department provides an environment in which police misbehavior tends to occur inordinately. In view of these considerations, we believe that the lower courts approved a remedy that was temperate, measured and necessary to meet the constitutional violations to which the respondents had been subjected and to reduce the likelihood that such violations would recur.

Argument

Traditional approaches to controlling police misconduct through federal litigation are inadequate in two major respects. First, they have certain inherent weaknesses which often thwart any meaningful redress for illegal

police activity. Police officers defendants are usually judgment-proof,[1] which means that even successful damage actions never result in any actual compensation to plaintiffs. Supervisory police officers cannot be held liable for misconduct of their subordinates in view of limitations placed by most courts upon the *respondeat superior* doctrine in § 1983 actions.[2] And, of course, governmental entities—the "deep pockets"—are immune to § 1983 damage actions.[3] Injunctive actions have proven no more effective. Generally framed in broad "thou shalt not" terms, they fail to convey to defendant police officers exactly what they can and cannot do[4] and contain no meaningful monitoring provisions,[5] two defects that make enforcement of these injunctions through use of the contempt power nearly impossible. Some commentators felt that injunctions running against municipalities themselves might prove more effective in precluding repeated acts of police misconduct.[6] This Court's decision in *City of Ke-*

---

[1] *Lankford* v. *Gelston*, 364 F.2d 197, 202 (4th Cir. 1966); *Mapp* v. *Ohio*, 367 U.S. 643, 670 (1971); Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 Minn. L. Rev. 493 (1955) and Hall, *The Law of Arrest in Relation to Contemporary Social Problems*, 3 Univ. of Chi. L. Rev. 345, 346-353 (1936). The President's Commission on Law Enforcement and Administration of Justice: *Task Force Report: The Police* (1967) at 199.

[2] *Boyden* v. *Troken*, 352 F.Supp. 722 (N.D. Ill. 1973).

[3] *Monroe* v. *Pape*, 365 U.S. 167 (1961).

[4] See generally, Note, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct*, 78 Yale L.J. 143 (1968).

[5] See generally, Note, *Use of § 1983 To Remedy Unconstitutional Police Conduct: Guarding the Guards*, 5 Harv. Civil Rights-Civ. Lib. L. Rev. 104 (1970) in which the use of monitors to oversee the enforcement of federal court injunctions is proposed.

[6] As one observer has noted:

> If the plaintiff seeks to enjoin harassment by municipal law enforcement officers, an injunction against the municipality offers him blanket protection. The plaintiff may be unable to

nosha v. *Bruno*,[7] extending the *Monroe, supra* concept of municipal immunity in 42 U.S.C. § 1983 damage actions to equitable suits, however, obviated any further reliance upon that approach.

But these approaches attack only the manifestations, not the root causes of police misconduct in America today. Rather than revealing the realities of police behavior, they tend to perpetuate outmoded premises and assumptions with respect to the scope and character of police lawlessness. For such suits, whether for damages or injunctive relief, tend to treat only discrete acts of misconduct, i.e. those involving specific policemen and specific citizens, generally occurring within a limited time period and within a restricted geographical area. That incidents of police brutality and abuse are caused by a few "bad-apple cops" acting without the permission, knowledge or consent of their superiors, that persons who have just grievances can get relief in the courts or through pursuing administrative remedies, that police department superior

identify the policemen directly responsible for past harassment, or they may be too numerous to join as parties. Injunctive relief against those individuals would undobutedly not reach policemen uninvolved in previous deprivations of civil rights. An injunction issued to the police commissioner would prevent authorized harassment but might not include police officers acting contrary to department policy and beyond the control of the commissioner. A decree against the department would bind all the police but might not prevent civil rights violations by other law enforcement agencies such as the sheriff's office. Equitable relief against the municipality, however, provides the broadest possible protection for civil rights secured by the Constitution and laws of the United States because it reaches every city official or employee with notice of the injunction who might violate those rights.

Note, *Injunctive Relief Against Municipalities Under Section 1983*, 119 U. of Pa. L. Rev. 389, at 391 (1970).

[7] 412 U.S. 507 (1973).

officers are committed to controlling misconduct and have created effective internal mechanisms to discipline offending subordinates are among the commonly held views that, though often false, are rarely tested in traditional 42 U.S.C. § 1983 police litigation.

Strong evidence exists to support the conclusion that police verbal abuse and brutality occur with some regularity in major urban centers. In the course of conducting a field study on police behavior in 1966, observers reported that police used clearly unnecessary or exessive amounts of force against citizens in 37 out of 3826 encounters they witnessed, concluding that "there should be little doubt that in major metropolitan areas the sort of behavior commonly called 'police brutality' is far from rare.[8] The Presidential Commission for which the field studies were prepared adopted similar findings into its official report.[9] And, though it has been contended that

[8] Reiss, "Police Brutality—Answers to Key Questions", *Transaction*, at 10-19 (July-August, 1968) (hereinafter, *Reiss*). The National Advisory Commission on Civil Disorders indicated that 3/10 of 1% of some 5,339 observed police-citizen contacts involved excessive or unnecessary force. *Report*, at 302 (Bantam Books ed., 1968). But as Ginger & Bell indicate in their *Police Misconduct Litigation—Plaintiff's Remedies*, 15 Am. Jur. Trials 555 (1968), 3/10 of 1% of the nearly 5 million arrests made annually would result in 15,000 excessive force arrests each year. *Id.*, n.9, at 561.

[9] The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Government Printing Office 1967), stated:

> . . . The Commission does have evidence from its own studies and from police officials themselves, that in some cities a significant percentage of policemen assigned to high crime areas do treat citizens with disrespect and, sometimes, abuse them physically.

at 115, see also, Westley, *Violence and the Police* (1970), at 99-104 (hereinafter, *Westley*).

physical brutality does not represent a major problem,[10] the consensus of informed observers is that verbal abuse and disrespect,[11] aggressive, field interrogations,[12] searches[13] and illegal arrests[14] continue to characterize police behavior, particularly in minority communities.[15] One recent study conducted by a Chicago blue ribbon

[10] The President's Commission on Law Enforcement and Administration of Justice: *Task Force Report: The Police* (1967) at 181 (hereinafter, *Task Force Report*).

[11] Black and Reiss, "Patterns of Behavior in Police and Citizen Transactions". II *Studies of Crime and Law Enforcement in Major Metropolitan Areas,* at 97 (1967), (hereinafter, *Black and Reiss,* 374; Terris, *Annals of the American Academy of Politics and Social Science* (1967), at 66; United States Commission on Civil Rights, *Mexican-Americans and the Administration of Justice in the Southwest.* (1970), at 8.

[12] *Task Force Report,* at 183-185.

[13] *Black and Reiss* at 82, 85, 90, Chevigny, *Police Power:* Police Abuses in New York City (1969) at 205-206, 208; (hereinafter, *Chevigny*) *Task Force Report,* at 185.

[14] *Task Force Report,* at 186-187, *Chevigny* at 219-220; La Fave, *Arrest: The Decision to Take a Suspect Into Custody* (1965) at 295-296.

[15] See generally, National Capital Area Civil Liberties Union, *A Police Department in Trouble: Racial Discrimination and Misconduct in the Police Department of Washington, D.C.* (1968); and United States Commission on Civil Rights, *Mexican-Americans and the Administration of Justice in the Southwest* (1970) President's Commission on Crime in the District of Columbia, *Report,* (1966) at 203-208. Also, Wolfgang and Cohen, *Crime and Race,* (1970); Rinella, *Police Brutality and Racial Prejudice: A First Close Look,* 45 J. Urban. L. 773 (1968) and Comment, *Socio-Legal Aspects of Racially-Motivated Police Misconduct,* 71 Duke L.J. 751 (1971). *Chevigny* at 285-287; Cray, *The Big Blue Line* (1967) at 173-176 (hereinafter *Cray*); and Bayley and Mendelsohn, *Minorities and the Police* (1969) at 130-132.

For the most comprehensive compilation to date of studies, reports and monographs on the nature and scope of police misconduct, see Hirshfeld, *Abuses of Police Authority,* Bureau of Social Science Research, Inc. (Washington, D.C. 1970).

panel convened by Congressman Ralph H. Metcalfe observed:

> There can be no dispute that police mistreatment of citizens occurs . . . But such statistics (on the high percentage of black citizens killed by policemen each year in Chicago) reflect only the iceberg tip of the problem of abusive police conduct. They say nothing of the many instances in which victims do not complain at all because they are convinced that it would be futile. Nor do such statistics reflect the false arrests, the illegal searches or the more common kind of psychological violence that occurs daily, especially in exchanges between police and minorities or young people. (Members of the Brown community, in addition to their minority status, frequently suffer harassment over their citizenship or residency status.) Very few young Blacks and Browns have been spared the experience of having to swallow their pride and take a bullying insult from a police officer. *The Metcalfe Report on the Misuse of Police Authority in Chicago* The Chicago Defender, July 1973 (Special Supplement at 8.

The victims of police misconduct are usually persons enjoying little credibility in the community.[16] And even those citizens whose complaints of illegal police conduct would ordinarily be entitled to belief are often arrested

[16] Studies have identified such "pariah" groups as hippies, homosexuals, political activists (particularly of the left), derelicts, prostitutes, narcotics users, drunks and persons with police and prison records as traditional targets of police abuse and brutality. *Chevigny* at 114; *Reiss* at 17-18, *Task Force Report* at 187-188 and *Cray,* at 148-152.

on "cover charges" in order to destroy the probativeness of their testimony.[17]

Furthermore, such police abuse and brutality cannot be explained merely by invocation of a "bad apple cop" theory, i.e., that only a small minority participate in or condone illegal conduct toward citizens. For, police abuse and brutality often grow out of an institutional matrix that encourages, condones, protects from external criticism and, sometimes, even rewards such misconduct. Support manifests itself in many ways. First aggressive behavior by police officer is often regarded by line patrolmen and superior officials alike as "good police work". Where an officer is acting in his official capacity, particularly in making an arrest, or quelling a disturbance, department officials tend to condone or, at least "wink at" the use of excessive force or abusive conduct.[18] Fellow officers, even those who dis-

[17] A "cover charge" is an arrest—generally for disorderly conduct, resisting arrest, or assault of a police officer—of a person who has been the victim of police abuse or brutality in order to protect the officer involved from civil or criminal liability. Such charges tend to destroy the victim's credibility and to dissuade him from filing an official complaint altogether. See *Chevigny* at 25-26, 18, 141-146, 287. The Chicago panel observed:

> In serious instances of abusive police conduct, the police constantly place criminal charges to justify their conduct and put the citizen-victim on the defensive. The use of the same three criminal charges—disorderly conduct, resisting arrest and battery against a police officer—is so constant that lawyers and community workers familiar with such cases refer to this group of criminal charges as the "holy trinity". *Metcalfe Report* at 8; see also, *Cray* at 175-176, 178-182.

[18] *Chevigny*, pp. 276-279; *Skolnick, Justice Without Trial* (1967) at 219-225. The *Metcalfe Report* described this factor in the following terms:

> It is basic law enforcement policy of the Police Department that aggressive police conduct toward citizens is desirable and legitimate.
>
> Abusive treatment of a citizen is viewed as merely overzealous conduct within the scope of accepted police behavior. *Id*, at 8.

approve of illegal conduct, generally make no effort to prevent such occurrences and are loath to resort to internal departmental procedures to see that the offending policeman is disciplined.[19] However, the most blatant and significant indicators of institutional support for police misconduct can be found in the way internal disciplinary procedures are designed and utilized to deter citizens from filing complaints,[20] to shield offending officers from identification and to avoid the imposition of any sanctions for

Two psychologists with first-hand knowledge of selection procedures employed by the Chicago Police Department testified in hearings held by the Metcalfe Panel that "when emotional and personality defects were discovered in a probationary policeman, the person is not removed from duty, but assigned to a "stress area"—an area which has a high crime rate and where the policeman get a lot of street experience first. The purpose is to make them or break them during their probationary period on the street", *Metcalfe Report*, at 6. It is interesting to note that many of the findings made by the *Metcalfe Report* were subsequently corroborated by *The Chicago Tirbune* after a five-month investigation of 500 alleged incidents of police misconduct. *Police Brutality* (A special *Tribune* supplement reprinting an eight-part series of articles appearing in its November, 1973 daily editions.) See also *Task Force Report* at 165. Levine, *Implementing Legal Policies Through Operant Conditioning: The Case of Police Practices*, 6 Law and Soc. Rev. 195, 214-215 (1972). But see, Balch, *The Police Personality: Fact or Fiction*, 63 J. Crim. L., C. & P.C. 106 (1972) for survey of conflicting views on the nature of police attitudes.

[19] One study showed that in more than one-half of all instances of undue force at least one other policeman was present who did not participate in the use of force, but also did not report it. *Reiss* at 18; Stoddard, *The Informal "Code" of Police Deviancy: A Group Approach to "Blue-Coat Crime"*, 59 J. Crim. L., C. & P.C. 201 (1968); and *Westley* at 109-138.

[20] Citizen complainants are often charged with filing "false reports", told they must swear to complaints under oath, thereby risking being charged with "false reporting", served with cover charges and generally subjected to a welter of harassment and bureaucratic red tape sufficient to deter all but the most tenacious and courageous person. *Task Force Report*, at 196.

such abuse.[21] Internal disciplinary mechanisms exist primarily to maintain police department discipline, not to redress citizen complaints of police misconduct.[22]

---

[21] Numerous studies have described the relative secrecy in which police department disciplinary procedures are carried out. As the Metcalfe Panel indicated:

> The entire handling of citizens' complaints against policemen is secret. Not only is the public completely excluded from any access to information, but the complainant himself receives no information whatsoever about the evidence obtained in an investigation, the manner in which it is evaluated, the reasons for a decision, or (in the rare case where a complaint is sustained) the penalty imposed. Until very recently he was not even informed of whether his complaint was sustained or not. *Metcalfe Report,* at 8-9.

See also, *Reiss* at 19, *Task Force Report* at 196; *Law Enforcement: The Matter of Redress,* Report by the American Civil Liberties Union of Southern California (Institute of Modern Legal Thought, 1969) at 19 (hereinafter *ACLU Report*); Neiderhoffer, *Behind the Shield* (1967) at 5. Note *The Administration of Complaints by Civilians Against the Police,* 77 Harv. L. Rev. 499, 505-508 (1963) Reiss and Bordua, "Environment and Organization: A Perspective on the Police," at 39 in Bordua, *The Police: Six Sociological Essays,* (1967); and, *Cray,* at 202-203.

[22] For the years 1965, 1966 and 1967, 5.2%, 5.3% and 11.4% of the complaints by citizens of excessive force against Los Angeles Police Department officers were sustained; yet for the same years 81.2%, 80.6% and 79.9% of the "neglect of duty" charges brought by fellow officers were upheld. *ACLU Report,* at 22-23. A 1970 study of the New York Police Department observed:

> . . . [O]ur findings raise doubts about the effectiveness of the Department's routine operations for dealing with police misconduct, especially criminal and civilian complaints. On balance, they suggest that the Department's formal disciplinary system is better suited for handling violations of internal rules and procedures that disrupt the normal and routine operations of the force than for responding effectively to complaints where individual citizens or the community at large are victims.

The New York City Rand Institute, *The Police Internal Administration of Justice in New York City* (November 1970). For the personal evaluations and recommendations of the author of the Rand Study, see Cohen, *The Internal System of Justice in New York City,* 63 J. Crim. L. C. & P. S. 54 (1972). And the *Metcalfe Report* found as follows:

> (Citing statistics.) These statistics show that complaints of abusive conduct were rejected 98.6 percent of the time by the Police Department. . . . The statistics also show that the Department is almost twenty times as likely to sustain a complaint against an officer if the complaint involves some other type of misconduct. This demonstrates that the police discipline system is far more lenient about abusive conduct toward citizens than it is about transgressions against its internal command authority. *Id.,* at 8.

As the foregoing discussion indicates, the institutional failure of many police departments to deal forthrightly and promptly with the problem of misconduct by its officers toward citizens provides a context within which further abuse and illegal conduct is likely to occur. Many police departments have already recognized the importance of institutional responsiveness to citizen complaints and have moved to create good faith mechanisms for handling such matters, without any apparent disruption of their law enforcement functions. In fact, consent decrees resolving litigation handled by the Legal Defense Fund in Providence, R.I., Macon, Georgia and Prince George's County, Md., have contained provisions for changes in citizen complaint mechanisms within the affected police departments very much like those ordered by the trial court in this lawsuit. In each, new police department regulations provided for 1) printed and easily obtained citizen complaint forms; 2) receipt and investigation of citizen complaints by a special section of the police department; 3) written investigatory reports; 4) an opportunity for a hearing before an impartial person or board within the department; 5) written decisions with respect to whether disciplinary action would be taken; 6) maintenance of citizen complaints and their disposition in the personnel files of individual officers. And in all three instances, the new procedures were designed to ensure that citizen complainants received

adequate information as to the investigatory process, periodic reports on the status of investigations of their complaints and notice with respect to the ultimate departmental dispositions of charges lodged by them. [Copies of consent orders in *Coalition of Black Leadership* v. *Doorley* (Providence) and in *Ridgeway* v. *Thompson* (Macon) and the joint motion of the parties agreeing to dismissal of *Boyd* v. *Gullett* (Prince George's County) and the new departmental citizen complaint procedures adopted in each department are included in the Appendix hereto for the Court's information].

No one can quarrel, certainly, with the proposition that problems of police misconduct should be left in the first instance to police departments, themselves, to resolve. But where there has been an abdication of a police department's constitutional duty to see that citizens are protected, not victimized, by law enforcement personnel, *Byrd* v. *Brishke*, 466 F.2d 6, 11 (7th Cir. 1972), federal courts must provide aggrieved citizens with a remedy which will so far as possible eliminate the unconstitutional effects of past police misconduct as well as bar like misconduct in the future. *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965). A police misconduct case, to quote the Court in another context, does not

> . . . differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 401 U.S. 1, 15 (1971).

Here, the trial court found that the Philadelphia Police Department's failure to establish and implement meaningful procedures to handle citizen complaints played a role in fostering periodic incidents of police misconduct. Its finding—one not unlike those made by various Presidential and governmental commissions and by numerous students of police-citizen-relations—fully justified the court in ordering the remedy at issue here. For the problem it identified was an institutional one requiring an institutional solution.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
CHARLES STEPHEN RALSTON
DREW S. DAYS, III
10 Columbus Circle
New York, New York 10019

Attorneys for the N.A.A.C.P. Legal Defense and Educational Fund, Inc.

APPENDIX

Judgment

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

THE COALITION OF BLACK LEADERSHIP, an Unincorporated Association, by its President, Michael Van Leesten, CURTIS MORRIS; JOSEPH L. COSTA; RICHARD METTS; RONALD GRAY; ALICE PENNINGTON; and BARBARA ARAUJO, on behalf of themselves and those similarly situated,

Plaintiffs,

VS.

JOSEPH A. DOORLEY, JR., Mayor of the City of Providence; HARRY GOLDSTEIN, Commissioner of Public Safety of the City of Providence; WALTER A. MC QUEENY, Chief of Police of the City of Providence, CAPT. STEPHEN M. MARONEY, JR., Director of Personnel and Community Relations of the Police Department of the City of Providence, ANTHONY CALICHIA, a police officer of the City of Providence and, PROVIDENCE LODGE #3, FRATERNAL ORDER OF POLICE,

Defendants.

This is an action brought by the Plaintiffs against the named Defendants under the provisions of the United States Code, namely 42 U.S.C. Sections 1981, 1983, 1985, 1986 and 1988. Jurisdiction in this United States Federal District Court is by virtue of the Federal Statutes concerned and is conceded by the parties. The case came on for trial and was heard by the Court, Chief Judge Raymond J. Pettine sitting without a jury. Testimony and evidence

was taken and after arguments of counsel, the trial was concluded. Thereafter, the case was held for the submission of post-trial legal memorandum by counsel and for decision of the Court.

By agreement of all parties, counsel have submitted to the Court, for entry, this Consent Judgment. Same is approved for entry by the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

1. The Providence Police Department shall adopt for use a uniform civilian complaint form to be available for use by any civilian wishing to lodge a complaint against any member of the Providence Police Department. The complaint form shall include space for the following information: the name, address and telephone number of the complainant and, witnesses to the alleged incident giving rise to the complaint; the nature, time and place of the alleged incident; the name, number, rank and detail of the officer or officers believed to be involved. Complaint forms shall be available to any citizen, or their representative, at the office of the Personnel Bureau; the front entrance desk at the Providence police station and at the offices of the Human Relations Commission. Complaints may be filed in person by any citizen, or may be completed and mailed, to the Bureau of Personnel.

Upon receipt of a complaint the Bureau of Personnel shall note thereon the date and time of receipt and shall notify the person designated therein as the complainant or his representative, whose name appears thereon, at the address given, by certified mail of the receipt of the complaint and the name of the officer assigned to investigate same. The complaint shall then be assigned by the Bureau of Personnel to an investigating officer from the Bureau.

The investigating officer shall investigate the complaint, and shall interview all persons named in said complaint either as parties or witnesses and any other persons having information concerning the subject matter of the complaint. The investigation shall be completed within thirty (30) days and a written report, including all statements, documents examined and other evidence taken shall be filed with the Director of the Personnel Bureau. For cause shown, an investigating officer may request an additional thirty (30) days within which to complete his investigation. If granted, the complainant shall be notified of this fact by the investigating officer.

The Director of Personnel, upon the filing of the complaint investigation, shall thereupon select an officer above the rank of sergeant as the hearing officer on the complaint. A hearing on the complaint shall be mandatory and notice of the time, date and place of hearing shall be given to all parties and their representatives at least ten (10) days prior to the hearing date. Notice shall be by certified mail.

The hearing held by the hearing officer will be informal. The investigating officer and any officers complained against shall attend. All parties may be represented by counsel or other authorized representative and shall have the right to present evidence and examine witnesses. A stenographic record shall be kept and shall be available, at cost, to any party to the proceedings requesting same.

The hearing officer, after hearing, shall make written findings of fact and based thereon shall find the police officer or officers complained against either "guilty" or "not guilty". If a complainant fails to appear at the hearing, the hearing officer shall make a notation thereof on the complaint and enter a "not guilty" finding. A complainant failing to appear on a complaint upon which a "not guilty"

finding was made may, for good cause shown, request the Director of the Personnel Bureau to reschedule a new hearing, at any time within one (1) year from the date of receipt of the complaint, and the Director, in his discretion, grant such request and reschedule a hearing on the original complaint.

Copies of the hearing officer's findings shall be transmitted to all parties and to the Chief of Police. The Chief of Police may approve or reject the decision made within thirty (30) days thereof. If rejected, the Chief of Police may, in his discretion, submit charges against the officer or officers in accordance with existing Department Disciplinary Procedures and, a copy of the Chief's action on the decision shall be noted in the personnel file of the officer involved. The action of the Chief of Police on the hearing decision shall be noted thereon, and he shall notify all parties of his decision by certified mail.

Records of hearings held shall be kept on file in the Bureau of Personnel for a period of two (2) years from the date of original hearing thereon. Same shall be available for inspection by any of the parties to the complaint, or their representatives.

2. All uniformed members of the Providence Police Department shall be assigned a number which will be similar in size and design to that type presently used and worn by the Rhode Island State Police, and all uniformed members of the Providence Police Department shall wear and display said number sewn onto the left chest portion of his uniform. A roster of the names and photographs of all uniformed policemen and the number assigned to said policemen shall be maintained by the Bureau of Personnel and will be available to any civilian claiming to have a

complaint against any member of the Providence Police Department for purposes of identifying the officer, except undercover officers whose pictures may be excluded.

3. The Providence Police Department shall take all necessary action to implement the terms of this Consent Judgment within thirty (30) days from the entry hereof, with the exception of paragraph two (2) which shall be complied with within sixty (60) days. Copies of the complaint form and of all new regulations and general orders issued to implement the terms of this Consent Judgment shall be filed with the court within ten (10) days after issuance or adoption.

4. This being a Consent Judgment, the Court makes no findings of fact on the evidence introduced at the trial and makes no findings of fact on the issues raised in the litigation.

Done in open court this 27th day of March, 1973.

/s/ Raymond J. Pettine
Raymond J. Pettine
Chief Judge
United States District Court
District of Rhode Island

Assented to as to form and substance:

For the Defendants

City of Providence, by its
Deputy City Solicitor,

/s/ Ronald H. Glantz
Ronald H. Glantz

Judgment

/s/ JOHN P. BOURCIER
John P. Bourcier
One Thousand Smith Street
Providence, Rhode Island

/s/ HARRY GOLDSTEIN
Harry Goldstein
934 Industrial Bank
Building
Providence, Rhode Island

/s/ GERALD J. MCCARTHY
Pres. F.O.P.

FOR THE PLAINTIFFS

/s/ ALTON W. WILEY
Alton W. Wiley
220 South Main Street
Providence, Rhode Island

/s/ DREW S. DAYS, III
10 Columbus Circle
New York, New York

/s/ JOHN M. RONEY
John M. Roney
56 Pine Street
Providence, Rhode Island

Consent Decree

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

FILE
FILED at 5:00 P.M.
SEP 20 1974

DOROTHY F. MOTEY
Deputy Clerk, U. S. District Court
Middle District of Georgia

Civil Action No. 2893

JAMES CALVIN RIDGEWAY, et al.,

Plaintiffs,

vs.

RONNIE THOMPSON, et al.,

Defendants.

Plaintiffs brought this action under 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988 against the Mayor, Chief of Police, Assistant Chief of Police, Chief of Detectives and Chairman of the Police Committee of City Counsel of the City of Macon, as well as nine (9) police officers for the City of Macon. The Plaintiffs seek injunctive and declaratory relief as appears more fully in the Complaint and Prayer for Relief in this action. The Defendants duly answered and denied the material allegations of the Complaint.

The Plaintiffs and the Defendants are desirous of resolving this matter without the time and expense of further litigation and the parties have consented to the entry of this Decree. This Decree does not constitute a finding or an admission of any unlawful or discriminatory conduct by any of the Defendants acting either in their official or their individual capacity. All Defendants expressly deny that they have acted in any way, under color of law or otherwise, to deprive the Plaintiffs of rights, privileges or immunities secured by the United States Constitution; by 42 U.S.C. §§ 1981, 1983, 1985, 1986 or 1988; or by any other state or federal law, regulation or order.

The Court has carefully examined the provisions of this Decree, including Exhibit A attached thereto, and it appears to the Court that this is a fair and reasonable resolution and in the best interest of all those who will be affected by it. Given the definition of classes set forth in the Complaint and the fact that the members of the alleged classes are not identifiable through reasonable effort, notice to the alleged classes by publication in the newspaper of widest circulation in this area is the only practical means of notice and is a means of notice reasonably calculated to appraise members of the alleged classes of the proposed settlement of this case.

Therefore it is

ORDERED, (1) That conditioned upon notice being made to the classes alleged in the Complaint and the failure of a substantial number of the members of the alleged classes to request exclusion from the classes and the failure of members of the alleged classes to raise substantial objections to these settlement and compromise provisions within the thirty (30) day period of time following the

initial publication of notice, the instant action is entirely resolved as to all Defendants herein, acting both in their official and their individual capacities, with prejudice to the claims of all named Plaintiffs and the classes alleged in the Complaint. The agreed costs of $350.00 will be paid by Defendants. It is further

ORDERED, (2) That the Defendants adopt and institute the procedure for processing citizen complaints of alleged police officer misconduct which is appended to this Decree as Exhibit A and which, the parties agree substantially complies with the relief requested by the Plaintiffs in this lawsuit. This procedure shall be fully implemented within six (6) months from the date of the entry of this Decree. It is further

ORDERED, (3) That the Defendants cause to be published in the Macon Telegraph once a week for a period of three (3) consecutive weeks, the notice appended to this Decree as Exhibit B. The publication of the notice shall commence within the ten (10) day period following the date of this Decree and a certification of compliance shall be filed with the Court by Defendants. Defendants shall pay the cost of providing notice shall pay the cost of providing notice in this manner. It is further

ORDERED, (4) That if a substantial number of alleged class members request exclusion from the classes or if substantial objections are raised to the provisions of the settlement within the thirty (30) day period of time following the initial publication of notice, a hearing will be scheduled and held to determine what disposition should be taken in this cause. It is further

ORDERED, (5) That during the period of notice provided in this Decree formal parties or their counsel shall not

Consent Decree

engage in unapproved direct or indirect written and oral communications with alleged, actual or potential class members who are not formal parties.

Dated this 20th day of September, 1974.

/s/ WILBUR D. OWENS
Wilbur D. Owens
United States District Judge

Stipulation of Consent

The undersigned hereby consent to the entry of a Decree in the form attached hereto on behalf of the parties they represent in this action.

RANDALL AND TURNER

By: /s/ WILLIAM C. RANDALL
William C. Randall
Attorney for Plaintiffs

Date: Sept. 20, 1974

LAWTON MILLER, SR.
/s/ LAWTON MILLER, SR.

Date: Sept. 20, 1974

THOMPSON, OGLETREE AND DEAKINS

By: /s/ HOMER L. DEAKINS, JR.
Homer L. Deakins, Jr.

Date: Sept. 19, 1974

By: /s/ H. LANE DENNARD, JR.
H. Lane Dennard, Jr.
Attorneys for Defendants

Date: Sept. 19, 1974

Exhibit A

**(Citizen Complaint Procedure
City of Macon Police Department
Macon, Georgia)**

1. Policy—It is the policy of the City of Macon and the Police Department of the City of Macon to enforce the Laws of the State of Georgia and Laws and Ordinances of the City of Macon in a manner consistent with the Constitutions of the United States and the State of Georgia. The Police Officers and other officers and employees of the City of Macon and the Macon Police Department must conduct themselves accordingly. These laws shall be enforced in a nondiscriminatory manner without a showing or implication in language or conduct of favoritism or antagonism toward any racial, ethnic or other minority group. Toward this end, the City of Macon and the Police Department for the City of Macon hereby adopt the following procedures whereby citizens and others who believe that they have been mistreated by the Police Department of the City of Macon may present their grievances to appropriate personnel for resolution.

2. Written Complaints—Whenever an individual who has been involved in an incident with Police Officer(s) of the City of Macon believes that he or she has been the object of police misconduct, such individual may file a written complaint with the Chief of Police of the City of Macon (Appendix A). This complaint shall include the name of the allegedly aggrieved citizen, the name(s) of the Police Officer(s) involved and the time, place and the circumstances involved in the incident. This complaint shall also include an explanation of the conduct that is deemed to be wrongful.

Exhibit A

Forms for citizen's complaints will be made readily available at Police Headquarters and other public sites. These written complaint forms may be submitted in person or mailed to the office of the Chief of Police of the Macon Police Department.

3. Investigation by Detective Bureau—If the facts of the case so indicate, the Chief of Police or his designated representative shall assign the case to the Detective Bureau for investigation. This assignment will normally be made as soon as possible within the seven (7) days following receipt of the complaint.

A report will normally be submitted by the Detective Bureau in the usual form and format for investigative reports. This report should be submitted to the Chief of Police within thirty (30) days from the date the case is referred to the Detective Bureau by the Chief of Police. This investigative report will include a statement from the complainant, statement(s) from the Police Officer(s) involved, statements from knowledgable witnesses and other materials and data deemed relevant.

4. Initial Conference With Chief of Police or Designated Representative—The initial step in attempting to resolve the complaint is a conference with the Chief of Police, Assistant Chief of Police or other designated officer at least of the rank of Captain. As soon as possible after a citizen's complaint is received, the office of the Chief of Police will contact the complainant and schedule this conference. This conference will normally take place within seven (7) days following the receipt of the citizen's complaint. However, if the case has been submitted to the Detective Bureau for investigation, this conference may,

Exhibit A

in the discretion of the Chief of Police or his designated representative, be delayed until such time as the report from the Detective Bureau has been submitted. The Chief of Police or his designated representative may, if appropriate, arrange a meeting between the complainant and the accused officer (and other interested parties, including complainant's counsel), and attempt to effect an informal reconciliation.

Within two (2) days following the conference with the Chief of Police, the complainant will be advised of what action, if any, will be taken in the case. The complainant will also be advised at this time that he or she may present their case to the Police Committee of the City Council if they are unsatisfied with the disposition of the case taken by the Chief of Police or his designated representative.

5. Hearing Before the Police Committee of City Council—If so requested by a complainant, a hearing will be conducted by the Police Committee of City Council under the normal procedures for City Council committee hearings. The complainant may be represented by an attorney or other interested person at this hearing but such representation is not required. The accused officer and the investigating officer from the Detective Bureau shall be present at this hearing and may be questioned by the committee members, the complainant or by other persons appearing in the complainant's behalf. The complainant, the accused Police Officer and representatives from the Police Department shall have the right to call and examine witnesses, to introduce exhibits and to cross examine opposing witnesses on matters relevant to the issues.

Exhibit A

The hearing shall normally be conducted within thirty (30) days from the date of the request by the complainant, unless a continuance is requested by the complainant. A written record of the hearing will be prepared which will, at a minimum, set out a summary of all testimony and other evidence presented in the case.

The Police Committee of City Council may approve the conclusions and recommendations of the Chief of Police or his designated representative, or it may adopt conclusions and recommendations of its own. The Police Committee may also request further investigation by the Detective Bureau. The final action of the Committee will be recorded in writing and will include a full explanation of the reasons for the decision.

Promptly after the Police Committee has reached its decision, the results will be forwarded to the Chief of Police. Thereafter, the Chief of Police shall promptly advise the complainant, in writing, of the decision reached by the Police Committee and what actions will be taken by the Police Department based on this decision. If a Police Officer is reprimanded or disciplined, a record of such action will be included in his or her personnel file.

6. Verbal Complaints—Individuals who present oral complaints by telephone or in person to Police Headquarters or to individual Police Officers will be requested to fill out a written citizen's complaint form. These individuals will be advised of the correct procedures to be followed under this citizen's complaint procedure. Upon request, a copy of the citizen's complaint form will be mailed to the complainant at the address furnished. All verbal complaints (along with written complaints) will be recorded on a central register as indicated in this policy.

Exhibit A

7. Recordation of Complaints in Central Register—Promptly after the receipt of a complaint, the office of the Chief of Police shall record the following information in a central register which will be maintained at Police Headquarters: (a) the full name of the complainant; (b) the manner in which the complaint was received (i.e., written complaint, oral complaint, personal appearance or letter); (c) date of receipt of complaint; (d) name of individual receiving original complaint; (e) time and place of alleged incident giving rise to complaint and (f) Police Officers accused and unit designation. The following items will be completed on the central register at the appropriate time: (a) date of initial conference; (b) date assigned to Detective Bureau for investigation; (c) whether a hearing before the Police Committee was requested, and (d) disposition of the case.

8. Availability of Citizen Complaint Forms and Dissemination of Information Concerning Citizen Complaint Procedures—The Police Department shall provide all members of the Macon Police Department with copies of this complaint procedure. In order to assure that all officers are knowledgeable concerning this policy and its implementation, training sessions will be conducted on this information. The Community Relations Section of the Macon Police Department shall be responsible for disseminating information concerning the citizen complaint procedure to all segments of the public. The citizen complaint forms themselves will be readily available at Police Department Headquarters. To aid in identifying accused Police Officers, all uniformed members of the Macon Police Department will be required to wear nameplates as a part of their official uniform.

Exhibit A

9. Definition of Police Misconduct—Police misconduct, as this term is used in this citizen complaint procedure will be deemed to mean conduct and/or speech of members of the Police Department for the City of Macon, acting in their official capacity in their interactions with citizens and other persons in the City of Macon, which violates the constitutional rights of such individuals or which violates federal or state law, City ordinances or the Rules and Regulations of the Macon Police Department. Police misconduct is further defined to include any conduct on the part of a Police Officer in the line of duty which discriminates against any person(s) or organization(s) on the basis of race, color, religion, sex or national origin.

10. Composition of Police Committee—The Police Committee referred to in this procedure shall be composed of the five (5) regular members of the Police Committee of City Council. The Chairman of the regular Police Committee of City Council shall also be Chairman of this Police Committee. All action taken by this committee shall be by majority vote.

Appendix "A"

(Citizen Complaint Form
City of Macon Police Department
Macon, Georgia)

1. *Person making complaint:*

   (a) full name .....

   (b) address .....

   Street Address

   .....

   City State

   (c) telephone number .....

2. I feel that I have been treated wrongfully by Police Officers of the City of Macon for the following reasons (include the time, place and circumstances of the incident):

   .....

   .....

   .....

   .....

3. The following Police Officers were involved in this incident (include name, rank and badge number, if these are known):

   (a) ....
   Name Rank Badge Number

   (b) ....
   Name Rank Badge Number

   (e) ....
   Name Rank Badge Number

Appendix "A"

4. The following persons were witnesses to the above incident or otherwise have knowledge of the facts surrounding this incident (include name and address):

   (a) .....
   Name

   .....
   Address

   (b) .....
   Name

   .....
   Address

   (c) .....
   Name

   .....
   Address

   .....
   Signature of person making complaint

   Date: ....
   Month Day Year

* Instructions for Filing This Complaint
This complaint may be filed in person with the office of the Chief of Police or Assistant Chief of Police at City Hall or mailed to the following address: Chief of Police, City of Macon Police Department, Macon, Georgia.

Received: ....
Month Day Year

By: ....
Name Position

Exhibit B

(Notice of Proposed Compromise and Settlement of Class Action)

IN THE

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

Civil Action No. 2893

JAMES CALVIN RIDGEWAY, et al.,

Plaintiffs,

vs.

RONNIE THOMPSON, et al.,

Defendants.

To: *All black persons who reside in Macon, Bibb County, Georgia, and all white persons in the City of Macon, Bibb County and Metropolitan Macon, Georgia, who choose to associate and who do in fact associate with blacks on a social basis.*

NOTICE IS HEREBY GIVEN THAT:

On August 22, 1973, a civil action was filed in the United States District Court for the Middle District of Georgia, Macon Division, as a class action by James Calvin Ridgeway, Wilbert Brooks, Eleanor Sue Pinkston, Cecil Spradley, Jr., Della Smith, Edward Grant, Jr., and Houston Johnson, on behalf of themselves and all black persons in the City of Macon, Georgia, and Ricky Jans and Rozlyn

Exhibit B

Adams on behalf of themselves and those white persons who choose to associate and who do associate with blacks on a social basis in the City of Macon and in the Metropolitan area of Macon, Georgia. The Defendants in this action are Ronnie Thompson, Mayor of the City of Macon, Georgia; J. F. Flynt, Chief of Macon, Georgia Police Department; J. E. Brooks, Assistant Chief of the Macon, Georgia Police Department; W. H. Bargeron, Chief of Detectives, Macon, Georgia Police Department; Dan Tidwell, Chairman of the Police Committee, Macon, Georgia City Council; Officer M. R. Jones, Macon, Georgia Police Department; Officer D. P. Woods, Macon, Georgia Police Department; Officer R. C. Page, Macon, Georgia Police Department; Officer D. W. Worsham, Macon, Georgia Police Department; Officer D. M. Johns, Macon, Georgia Police Department; Officer Issac Stephens, Macon, Georgia Police Department; Officer Walter Duke, Macon, Georgia Police Department; Officer David Matthews, Macon, Georgia Police Department; and Officer Neal Hartley, Macon, Georgia Police Department. All Defendants are sued both individually and in their official capacities, and the Defendant police officers are also sued as representatives of a class of Defendants.

The named Plaintiffs and the classes they allegedly represent are seeking relief under 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988, as well as the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

The named Plaintiffs and the classes they allegedly represent seek relief from alleged racially discriminatory conduct, practices and policies of the Defendants regarding the official activities of police officers in their interactions with citizens and others in the City of Macon. Specifically,

Exhibit B

Plaintiffs seek a modification of the procedure utilized by the City of Macon and the Police Department for the City of Macon to process citizen complaints of alleged police officer misconduct and a declaration of their rights under applicable laws.

The parties to this action have entered into a Stipulation of Consent and have agreed upon the terms of a Consent Decree as a compromise and settlement of all claims made by the named Plaintiffs and the classes they allegedly represent. The Consent Decree provides that the City of Macon and Police Department for the City of Macon will adopt a procedure for processing citizen complaints of alleged police officer misconduct which, the parties agree, substantially complies with the relief requested by the Plaintiffs.

Your rights may be affected in this action and, therefore:

(a) The Court will exclude you from the classes allegedly represented by the Plaintiffs if you request exclusion in writing by addressing the Clerk of the United States District Court, Middle District of Georgia, Macon Division, Macon, Georgia 31202.

(b) If you do not request exclusion from the classes pursuant to paragraph (a) above, you will be included in such classes and any judgment, whether favorable or not, including any judgment approving settlement of this action, will be binding upon you.

(c) If you do not request exclusion from the classes but prefer, in connection with your individual claim, to be represented by your own attorney rather than by William C. Randall of Macon, Georgia, and Jack Greenberg of New York City, attorneys for the named Plaintiffs herein, you

Exhibit B

may enter an appearance through your own attorney in writing by addressing the Clerk of the United States District Court, Middle District of Georgia, Macon, Division, Macon, Georgia 31202.

(d) If you do not request exclusion from the classes, then you may file objections to the Consent Decree agreed upon by all parties to this action in compromise and settlement of this action by submitting said objections to the Clerk of the United States District Court, Middle District of Georgia, Macon Division, Macon, Georgia 31202.

The above requests of exclusion, entries of appearance and objections to the settlement agreement may be made within the thirty (30) day period of time following the initial publication of this notice.

If you have any questions concerning this notice, you may write or call the Office of the Clerk of the United States District Court for the Middle District of Georgia, Macon Division, Macon, Georgia 31202.

Dated this 20th day of September, 1974.

/s/ WILBUR D. OWENS
Wilbur D. Owens
United States District Judge

Motion for Leave to Strike Class Action Allegations and to Dismiss Actions

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

Civil Action No. 72-1278-Y

CECIL BOYD, et al.,

Plaintiffs,

vs.

WINFIELD M. KELLY, JR., et al.,

Defendants.

The plaintiffs, Cecil Boyd, et al. and the defendants, Winfield M. Kelly, Jr., et al., hereby move the Court to strike the class action allegations of the complaint herein and thereafter to discontinue and dismiss this action with prejudice. As grounds for this motion, the parties state as follows:

1. That as of December 2, 1974, Winfield M. Kelly, Jr. replaced William W. Gullett as County Executive of Prince George's County, Maryland.

2. That more than sixty (60) days ago on February 19, 1975, Winfield M. Kelly, Jr., County Executive for Prince George's County, Maryland, voluntarily implemented certain policies and procedures with regard to the receipt, investigation and resolution of citizen complaints about the conduct of police officers of Prince George's County.

Exhibit B

3. That said policies and procedures were implemented by Executive Order No. 44-1975 issued by the County Executive on February 19, 1975, which order is attached hereto as Exhibit A.

4. That the plaintiffs, upon learning that such policies and procedures had been implemented, reviewed same, and found them to resolve the matters in dispute in this action.

5. That said County Executive, by affidavit attached hereto as Exhibit B, has expressed his commitment to continue such policies and procedures in effect in the future.

/s/ JOSEPH S. CASULA by MOC
Joseph S. Casula, *County Attorney*

/s/ ROBERT N. BOYER
Robert N. Boyer, *Associate County Attorney*
Courthouse
Upper Marlboro, Maryland 20870
627-3000, Ext. 224

/s/ JOSEPH A. DEPAUL
Joseph A. DePaul
7100 Baltimore Avenue
College Park, Maryland 20740
277-8451

Attorneys for Defendants

/s/ JOHN M. FERREN
John M. Ferren

/s/ DAVID S. TATEL
David S. Tatel

Exhibit B

/s/ ALLEN R. SNYDER
Allen R. Snyder

/s/ TERRY MICHAEL BANKS
Terry Michael Banks
HOGAN & HARTSON
815 Connecticut Avenue
Washington, D. C. 20006

/s/ DREW S. DAYS III
Drew S. Days III
10 Columbus Circle
New York, New York 10019

/s/ JOSEPH A. FINLAYSON
Joseph A. Finlayson
3847 Bryant Avenue
Suite 114
Hillcrest Heights, Maryland 20031

/s/ HAROLD BUCHMAN
Harold Buchman
5400 Tower Building
Baltimore & Gilford Avenue
Baltimore, Maryland 21202
Attorneys for Plaintiffs

Dated: April 29, 1975

Exhibit B

(Affidavit)

STATE OF MARYLAND,
COUNTY OF PRINCE GEORGE'S, *ss.:*

Before me, the undersigned Notary Public, personally came and appeared:

Winfield M. Kelly, Jr., who, being duly sworn, deposes and says:

(1) That I am County Executive of Prince George's County, Maryland, having been lawfully elected to the office by the people of Prince George's County, Maryland. I submit this affidavit in support of the motion to strike the class action allegations and to dismiss this action.

(2) That on February 19, 1975, I issued Executive Order No. 44-1975 by which certain policies and procedures with regard to the receipt, investigation and resolution of citizen complaints about the conduct of police officers of Prince George's County were placed into effect.

(3) That as County Executive of Prince George's County, Maryland, it is my intention to maintain and to improve the policies and procedures set forth in the aforesaid Executive Order.

/s/ WINFIELD M. KELLY, JR.
Winfield M. Kelly, Jr.
County Executive, Prince George's
County, Maryland

SWORN TO AND SUBSCRIBED before me, the undersigned, this 29th day of April, 1975.

/s/ BONITA M. BRADLEY
Notary Public

My commission expires:
July 1, 1978

Order

In The

UNITED STATES DISTRICT COURT

For the District of Maryland

Civil Action No. 72-1278-Y

Cecil Boyd, et al.,

Plaintiffs,

—v.—

Winfield M. Kelly, Jr., et al.,

Defendants.

Upon the Joint Motion of Plaintiffs and Defendants to Strike Class Action Allegations and For Leave to Dismiss This Action, dated April 29, 1975, and upon the Affidavit of defendant Kelly, dated April 29, 1975, it is this ..... day of ....., 1975,

Ordered that the class action allegations contained in plaintiffs' amended complaint are hereby stricken, and it is further,

Ordered that this action be dismissed with prejudice, and it is further,

Ordered that the court costs as assessed by the Clerk shall be paid one-half by the plaintiffs and one-half by the defendants.

.....

District Judge

Exhibit A

(Executive Order No. 44-1975)

Prince George's County

[Emblem]

Courthouse,
Upper Marlboro, Maryland 20870
(301) 627-3000

Winfield M. Kelly, Jr.
County Executive

Whereas, it is the policy of the government of Prince George's County and the Prince George's County Police Department, in particular, to enforce the Laws of the State of Maryland and Laws and Ordinances of Prince George's County in a manner consistent with the Constitution of the United States and the State of Maryland; and,

Whereas, police officers and other officers and employees of the County and Prince George's County Police Department must endeavor at all times to conduct themselves accordingly; and,

Whereas, such laws must be enforced in a non-discriminatory manner without a showing or implication in language or conduct of favoritism or antagonism toward any racial, ethnic or other minority group; and,

Whereas, it is in the best interests of all citizens and employees of Prince George's County for citizen complaints against County police officers to be resolved expeditiously and in a just manner,

Now, Therefore, by virtue of the authority vested in the County Executive by Article V, Sections 501, 502 and 503 of

Exhibit A

the Charter for Prince George's County, Maryland, it is, this 19 day of February, 1975;

ORDERED that the following procedures and policies shall be implemented by the Prince George's County Police Department and the Human Relations Commission:

I. CITIZEN COMPLAINTS

A. Whenever an individual believes that he or she has been the object of police misconduct, such individual may file a written complaint with the Chief of Police of Prince George's County on a form consistent with that contained in Attachment A.

1. The complainant should include on this form, to the extent that he or she is able, the name of the allegedly aggrieved citizen, the name(s) and badge number(s) of the police officer(s) allegedly involved, the time, place and circumstances involved in the incident. This complaint shall also include an explanation of the conduct that is deemed to be wrongful. If the complaint against one or more police officers alleges that brutality was used by such officer(s) in the execution of their duties, then the complaint shall be sworn to before an official authorized to administer oaths in accordance with the requirements of Article 27, Section 728(B)(4) of the Annotated Code of Maryland.

2. Sufficient supplies of citizen complaint forms shall be readily available at every Prince George's County Police station, every public library branch within the County, at a designated office at the County Courthouse, and at every office of the Prince George's County Human Relations Commission (hereinafter "HRC"). These written complaint

Exhibit A

forms may be submitted in person or sent by mail to any office of the Prince George's County Police Department or to any office of the HRC.

B. Individuals who present oral complaints by telephone or in person to police headquarters, to individual police officers or to HFC officials shall be instructed to fill out a written citizen's complaint form. The police officers or HRC officials shall advise said individuals of the correct procedures to be followed under this citizen's complaint procedure. Upon request, a copy of the citizen's complaint form will be mailed to the complainant at the address furnished.

C. The Police Department shall place posters in all police stations, libraries, and the offices of the HRC which explain the procedure for filing a complaint.

D. An explanation of the complaint procedure shall be made to all officers of the Prince George's County Police Department in a General Order to be included in the General Order Manual of the Police Department, and shall be included in the training program for all new officers.

II. INVESTIGATION OF COMPLAINTS

A. The Internal Affairs Section of the Police Department, upon receipt of any citizen complaint form which alleges that sworn personnel of the Police Department took any action which may be investigated by the HRC, shall immediately transmit a copy of such complaint form to the HRC. Such complaints include those which allege police harassment (including unlawful arrests and other discriminatory and unlawful acts), excessive or unnecessary use

of force and the use of language which would demean the inherent dignity of any person (including the use of abusive language or racial epithets).

1. The Internal Affairs Section of the Police Department shall commence an investigation of all such complaints within a reasonable amount of time, ordinarily within thirty (30) days from the date of receipt of such complaint in the section. The purpose of such investigation shall be to evaluate the merits of the complaint in an objective manner.

B. Upon the completion of its complaint investigation, the Internal Affairs Section shall immediately forward to the Chief of Police a full report of its investigation including findings of fact and recommendations, if any, either for exoneration or disciplinary action to be taken against the officer(s) involved.

C. Within ten (10) days after the receipt of the report by the Internal Affairs Section, the Chief of Police shall decide whether to take disciplinary action against the officer(s) who is (are) the subject(s) of a complaint.

1. In the event that disciplinary action is proposed, the provisions of Article 27, Sections 727-734 of the Annotated Code of Maryland and the provisions of the Charter and the Code of Ordinances and Resolutions of Prince George's County, Maryland, (to the extent that they do not conflict with state law) shall apply. In any case where the Chief of Police, either pursuant to a request of the Human Relations Commission under Section II(D)(2) below or at the request of an officer who is the subject of a complaint, convenes a hearing pursuant to Article 27, Sections 727-734 of the Code, the Human Relations Commission shall be

advised of the time and place that the hearing will be held. Members of the HRC's staff may attend such hearings and shall be encouraged to do so. Within ten (10) days after such hearing is concluded, the HRC shall advise the Chief of Police and all parties to the investigating committee hearing (1) whether there is available to the HRC additional evidence (in the form of one or more witnesses who are willing to testify or in the form of documents or records obtained as a result of investigation by the HRC) which was not introduced at said hearing; (2) whether in the opinion of a majority of the members of the HRC the introduction of any of such evidence would substantially affect the results of said hearing. The recommendations of the investigating committee shall be forwarded to the Chief of Police, to the complainant, and to the HRC no sooner than ten (10) and no later than twenty (20) days after the conclusion of such hearing except to the extent that such time period is altered by other provisions of this Executive Order. Included with such notification, in the event that both of the above conditions are met, shall be a request by the HRC to the Chief of Police to reconvene the hearing so that the Internal Affairs Section may properly present such evidence to the investigating committee. In the event that the Chief of Police refuses to reconvene such hearing, the HRC shall request the County Executive to instruct the Chief of Police to do so. If the County Executive refuses to do so, the HRC shall convene a hearing for the limited purpose of receiving such evidence which was the basis of the request to the Chief of Police to reconvene the investigating committee hearing. Such hearing shall be held and the transcript thereof shall be forwarded to the Police Department within twenty (20) days after the date that the County

Exhibit A

Executive refuses to instruct the Chief of Police to reconvene the investigating committee hearing. Such supplementary hearing before the HRC shall be conducted in accordance with Section D(3) below. In the event that the investigating committee hearing is reconvened or in the event that a separate supplemental hearing before the HRC is held, the investigating committee shall make its recommendations after such reconvened hearing has been concluded or after the transcript and exhibits of the HRC supplementary hearing have been received. The other time limits referred to above shall be adjusted accordingly. Within an additional ten (10) days thereafter, the Chief of Police shall issue detailed findings of fact and conclusions including a determination whether appropriate disciplinary action shall be taken against any officer who is the subject of a complaint. Detailed findings of fact and conclusions of the Chief of Police shall be forwarded promptly to the complainant and to the Human Relations Commission. These findings and conclusions, together with the findings of the investigating committee, shall be available for inspection by any member of the public during regular business hours at the offices of the Human Relations Commission.

2. In the event that final disciplinary action is taken without a hearing having been held by the investigating committee or in the event that no disciplinary action is taken against an officer who is the subject of a citizen complaint described in Paragraph II(A) above, then the Chief of Police shall so notify the HRC and the complainant in writing within ten (10) days of his making the decision. Included with such notification shall be specific findings of fact and conclusions upon which the decision is based.

Exhibit A

D. In cases where no hearing has been held by the Police Department, whether the officer who is the subject of a complaint is exonerated or disciplined, the HRC, upon the receipt of the findings and conclusions of the Chief of Police, shall review the report of the investigation including statements of all persons interviewed as prepared by the Internal Affairs Section of the Police Department. The Human Relations Commission shall not refuse to review or investigate any complaint which it receives under this procedure solely because the complainant or any other witness is unavailable. Once such review has been completed, the HRC may conduct such further investigation as it may consider necessary to complete its review of the complaint. Such review and any further investigation shall be completed within thirty (30) days from the date that the findings were received. Within the same period of time the Human Relations Commission shall determine whether or not it shall concur with the findings of the Police Department.

1. If a majority of the Human Relations Commission concurs with the Police Department's findings, conclusions, and proposed disciplinary action, then the Human Relations Commission shall adopt the findings, conclusions and recommended disciplinary action of the Police Department as its own.

2. In the event that a majority of the Human Relations Commission, after review and investigation, does not concur with the findings, conclusions, or recommendations of the Police Department, it shall request the County Executive to instruct the Chief of Police to convene an investigating committee hearing pursuant to Paragraph II(C)(1) if such hearing has not already been held. The County

Executive shall respond to the request of the Human Relations Commission within ten (10) days.

3. In the event that the County Executive refuses to convene a hearing pursuant to Paragraph II(D)(2) above, the Human Relations Commission shall convene its own hearing to further consider the complaint.

a. Each such hearing shall be transcribed.

b. The complainant and the officer(s) under investigation shall have the right to counsel, the right to cross-examine witnesses, and the right to present evidence.

c. At the conclusion of such hearing, the HRC shall issue detailed findings of fact and conclusions. HRC's findings, conclusions, and recommendations shall be mailed to the complainant and to the Police Department within two (2) days of their completion and shall be available for inspection by any member of the public during regular business hours. Any additional investigation shall be completed and the hearing by the HRC shall be held within thirty (30) days from the date of the decision by the County Executive referred to in Section II (D) (3) unless the HRC, for good cause shown, grants a postponement of such hearing; provided, however, that in no event shall such hearing by the HRC be held later than sixty (60) days after the date of said decision by the County Executive.

E. In the event the Police Department fails to initiate or complete the proceedings described in Paragraph II(A), (B), or (C) above within one hundred and eighty (180)

days after the filing of the complaint, HRC shall proceed pursuant to Paragraph II(D) above to conduct a preliminary investigation of the allegations contained in the complaint. Within thirty (30) days thereafter HRC shall either notify the complainant in writing that his or her complaint is frivolous, giving reasons therefor, or invoke its authority under Paragraphs II(D)(2) or II(D)(3) if a majority of the HFC concludes, after the initial investigation, that the complaint is not frivolous.

III. Identification of Officers

A. To aid citizens in identifying officers, all officers shall wear a lacquer protected brass nameplate with black letters. Such nameplate shall be worn centered over the right breast pocket with the bottom line ½ inch above the top seam of the right breast pocket. When the winter jacket is worn, the nameplate shall be worn on the right breast pocket flap, centered ½ inch below the top seam. The nameplate shall be worn and maintained at all times so that it is legible from a distance of five (5) feet.

B. All officers who prepare incident reports or arrest reports shall be required to identify every officer of the Department who was present during the incident. The Department's report forms shall be revised to include a section for such listing. The Department's Police Manual shall be revised to include this requirement.

IV. Training Programs

A. The Prince George's County Police Department shall include in its training program for all new officers courses concerning police-community and race relations.

Exhibit A

B. The Department shall require each of its officers to attend, at least once every three (3) years, a course or courses of instruction sufficient in content, duration, and scope to provide effective continuing education in police-community and race relations.

/s/ WINFIELD M. KELLY, JR.
Winfield M. Kelly, Jr.
County Executive